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2. **CLIMATE:** Calif. businesses fear A.B. 32 will spur 'tax-like' carbon fees

Arthur O'Donnell, special to *Greenwire*

FALLEN LEAF LAKE, Calif. -- As California takes its initial steps to implement the "Global Warming Solutions Act of 2006," business leaders are warning the law could lead to a tax on carbon and curbs on the state's economic growth.

CLIMATE CHANGE SPECIAL REPORT

At the California Independent Energy Producers (IEP) annual conference here this week, California Chamber of Commerce Vice President Dominic Dimare criticized the Legislature for eliminating allocations for economic analysis of the measure by agencies that develop regulations and market programs for achieving the law's ambitious goals.

At the same time, Dimare said, a provision will allow the California Air Resources Board (CARB) to impose fees on emitters of greenhouse gases with the funds available for appropriation by the Legislature.

The law, A.B. 32, specifies that California must reduce greenhouse gas emissions to 1990 levels by the year 2020, using a combination of new regulations and market-based schemes.

"A cap on carbon is a cap on growth," Dimare declared. "If you are going to expand in California, you will have to pay. You'll have to find new technologies to reduce carbon, and if that isn't enough, you'll have to pay above and beyond."

At issue is this provision: "The state board may adopt by regulation, after a public workshop, a schedule of fees to be paid by the sources of greenhouse gas emissions." The money would go into an Air Pollution Control Fund available for "appropriation by the Legislature" for the purpose of carrying out the law.

Under that category could fall the administration of mandatory reporting of carbon by specified industries, new regulatory efforts, and a potential state or regional cap-and-trade program for GHG emission offsets.

Such charges are called "Sinclair fees" after a 1997 California Supreme Court decision, *Sinclair Paint Co. v. State of California*, that allowed regulators to levy the costs of mitigating pollution to the source, upholding the "polluter pays" principle. Further, the court said these fees are not subject to a two-thirds majority vote by lawmakers or approval by voters, as are general or specialized taxes.

However, the business community is stridently opposed to these "tax-like fees," saying they rarely relate to the services for which they are assessed, generate revenues in excess of their purpose and are easily diverted to pay for programs usually reserved for general fund allocations.

Dimare also worried that there is no budget allocation for economic analysis of any reduction efforts. "There needs to be a sector-by-sector analysis and monitoring of the impact cap and trade will have on individual sectors," he said.

Dan Skopec, undersecretary of the California EPA, emphasized that Gov. Arnold Schwarzenegger (R) is against new taxes of any type. But, he admitted, "CARB has the authority to levy fees," and "the governor calls these fees."

How much money is at stake is uncertain. CARB and other state agencies expect to add scores of new staff positions to undertake the decades-long regulatory process contemplated by A.B. 32, but whether lawmakers will

incorporate new positions and programs into the state budget could become an issue. "We will put forward a significant plan for staffing next year," Skopec said. "The Legislature can refuse to authorize staffing."

If so, that might add to the total administrative costs that would need to be recouped through fees.

Who will lead on energy-related action?

One element of A.B. 32 that was left purposefully vague is which agency will have responsibility for energy-related actions.

The Schwarzenegger administration originally wanted implementation to be coordinated by an umbrella group of executive agencies so that each could apply its relevant expertise to the task. A.B. 32's authors, however, saw that as vesting too much power in political appointees and held out for CARB to be the lead agency.

IEP panelists suggested that legislative negotiators did not want to start peeling authority away from CARB because that would open the door to other agencies seeking specified authority for aspects of the bill.

"Politically, it is preferable to have confusion than clarity," said Phil Isenberg, an energy industry lobbyist. "Clarity would involve specific orders to individuals and entities. No one wants to do that. And if there are no higher taxes, the process will seek solutions that have no money behind them, and hope it works out."

The California Public Utilities Commission "is already on the road toward a cap-and-trade system for electric utilities" said Devra Wang, director of California energy programs for the Natural Resources Defense Council. "Does CARB want to take the lead on that?"

NRDC, which strongly advocated A.B. 32 and hopes to see a cap-and-trade program included among the market options, has no preference as to which agency takes the lead, Wang said. "But we want the rules to be consistent for investor-owned utilities and [municipalities], and across all industrial sectors."

Skopec recognized that the CPUC and the California Energy Commission clearly have stronger expertise in energy matters than CARB. "Whatever energy regulations come out should be done in close, close coordination with the CPUC and CEC," he said.

In addition, the governor expects to continue reliance on his Climate Action Team, led by the California EPA and made up of various agency heads and staff, to provide continuing support for CARB's effort. "There's no way CARB can take this on and get the necessary reductions without all the others," Skopec said. "We want the other agencies to help us with ideas that we might not be aware of."

Early action planned

The timetable for A.B. 32 calls for CARB to establish rules for mandatory reporting of GHG emissions and to have a 1990 baseline emissions inventory in place by Jan. 1, 2008. One year later, the agency will issue a draft plan for achieving its target reductions, followed by a two-year public participation process. Programs to meet the goals would then be in effect by 2012.

In the meantime, CARB has been directed to develop by next July a "discrete list of early action items for 2010 implementation," Skopec said. The administration wants to pursue both new regulations and ideas for market-based approaches on a parallel track, with some definitive actions ready to start during 2007. "We have all the authority in the world to do that," he said.

Earlier this year, the Climate Action Team released a report recommending more than 40 possible strategies for achieving about 174 million tons/year of GHG reductions by 2020. Not all are appropriate for early actions he said, but "many of which we will employ in the coming years."

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